
(2004) 09 NCDRC CK 0095

In the National Consumer Disputes Redressal Commission

Jasvinder Singh

APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD.

RESPONDENT

Date of Decision : 15-09-2004

Acts Referred:

Citation : 2004 3 CPR 145 : 2005 1 CLT 557 : 2005 1 CPC 214 : 2005 1 CPJ 56

Hon'ble Judges : M.B.Shah , Rajyalakshmi Rao J.

Advocate : M.N.Krishna Mani , Inderbir Singh , D.Singh , Sanjay Sharma

Final Decision : Disposed Of

Judgement

1. M/s. Kayasens, Surveyors, appointed by the Insurance Company, submitted their elaborate report dated 18.2.2000 and assessed the net loss at Rs. 49,79,539/-. Yet, the Insurance Company, for the reasons best known to it, failed to pay the said amount despite recommendation by the Regional Office. It is contended that there was unfair trade practice by the Insurance Company. We, for the reasons stated below, hold that deduction was totally unjustified and arbitrary.

2. THE aforesaid conclusion is arrived at by considering the fact that the complainant has taken an insurance policy in respect of plant and machinery, building and stocks of raw materials including stocks in process in connection with business of manufacturing various kinds of ply-boards, block-boards, etc. For such manufacturing activity, the complainant is required to have raw materials in the form of wood which is purchased locally and also maintain semi-finished stocks. It is contended that fire occurred at his premises on 12.10.1999 and that for the assessed loss of Rs. 92,23,490/-, the Insurance Company paid only a sum of Rs. 35,35,976/-. This delayed payment was made after a lapse of one year. It is, therefore, submitted that there was an unfair trade practice indulged in by the Insurance Company. THE complainant has, therefore, prayed that the Insurance Company be directed to pay: (1) Shortfall of the claim of Rs. 56,87,514.22 (Rupees fifty-six lakhs eighty-seven thousand five hundred fourteen and twenty-two paise only). (2) Rs. 75,00,000/- (Rupees seventy five

lakhs only) for the loss of business, delay in settlement of claim, undue expenses, compensation for the trauma, misery, pain, dismay caused to the complainant. (3) That is, total claim is for a sum of Rs. 1,31,87,614/- with interest @ 20% per annum till the date of payment. By a registered letter dated 6th September, 2000, the Insurance Company informed the complainant that Competent Authority has agreed to approve the following claims on the basis of coverage under respective policies: (A) Loss approved for building and/or sheds covered vide policy No. 11/7452 Rs. 10,78,238.50 Less pro-rata "Re-instatement of sum insured for the period w.e.f. 12.10.1999 to 7.8.2000. 5% S. Tax included Rs. 5,144.00 Total Rs. 10,73,094.50 (B) Loss approved for plant and machinery covered vide policy No. 11/7155 Rs. 5,59,084.32 Less pro-rata "Re-instatement of (C) Loss approved for stocks covered vide policy No. 11/7362 Rs. 19,26,663.48 Less pro-rata "Re-instatement of sum insured premium for the period w.e.f. 12.10.1999 to 24.4.2000 Rs. 12,204.00 Total Rs. 19,14,459.48 Total A+B+C Rs. 35,45,976.30 Less Excess clause as per Policy Rs. 10,000.00 Net amount payable Rs. 35,35,976.00 Before releasing the payment we would like you to return the Discharge Voucher, duly signed by you, enclosed herewith in duplicate.

Thereafter the complainant immediately wrote on 15.9.2000 stating inter alia that: "To our dismay you have sent us discharge voucher of Rs. 35,35,976/- against our claim of Rs. 92,23,490.22 which was agreed upon for Rs. 49,80,000/- in the meeting held with Divn. Manager Sh. A.K. Aggarwal and Surveyor Sh. K.P. Sen on 13.2.2000. We agreed to this settlement much against our wishes as our loss was much more but Divn. Manager Mr. Aggarwal assured us that since this falls within the limits of Regional Manager, Chandigarh, the payment of claim will be made latest by 31.3.2000. Now you have backed out from the settlement of Rs. 49,80,000/- and sent us the voucher for Rs. 35,35,976/- for discharge which is totally wrong and not justified from an Insurance Company of repute. It is cheating and highhandedness as the payment agreed upon has not been made and it has been unduly delayed. We are accepting the payment of Rs. 35,35,976/- because of exigencies of business treating it as part payment and reserve our rights to recover the balance amount through Court of Law."

3. UNDISPUTABLY, on 15th September, Insurance Company along with a letter sent a cheque for a sum of Rs. 35,35,976/- for the loss that occurred on 12.10.1999. At the time of hearing of this complaint, learned Counsel for the complainant confined his submissions to unjustified deduction from agreed sum of Rs. 49,80,000/-. It is pointed out that the aforesaid amount was agreed to be paid in a meeting held with Divisional Manager and the Surveyor on 13.2.2000. As against this, learned Counsel for the Insurance Company submitted that amount was deducted because peril to stock in process was not covered by the insurance policy. In our view, the submission of the Insurance Company is totally unjustified for the reasons stated below: Firstly, it is to be stated that complainant was taking insurance policy continuously for years and those policies

covered the risk of stock in process. The policy for the period between 25.4.1998 and 24.9.1999, which was taken for a sum of Rs. 80 lakhs, covered the following risks: "On stocks of plywood, Board and/or raw materials of all kinds to be used for the manufacturing of plywood and/or Boards, whilst stored and/or lying and/or under any process in the insured factory, built of 1st class construction situated at above address."

4. THEREAFTER, the policy was renewed for which cover-note was issued on 22.4.1999. This policy was also for a sum of Rs. 80 lakhs. Premium charged was for a sum of Rs. 49,623/-. For the said sum of Rs. 80 lakhs for the year 1998-99, premium charged was Rs. 44,688/-. The cover-note provides coverage of risks as under: "On stocks of raw material of timber and/or plywood. Boards and/or other materials to be used for the manufacturing of plywood, whilst stored and/or lying in the insured factory, build of A class construction, situated at above address. R/ Policy No. 11/06786 exp. on 24.4.1999."

Last line undisputedly provides that it is for renewal of insurance policy, which expired on 24.4.1999. This would mean that the policy was simplicitor for renewal of risk, which was covered by the previous policy. This is required to be mentioned because in this cover-note, the words "stock in process" are not mentioned. Considering the aforesaid coverage, it is apparent that the insurance coverage was for stocks or raw materials of timber plywood, boards or other materials to be used for manufacture of plywood. This would undoubtedly include the stock in process. Same was the view taken by the Branch Manager of the Insurance Company. This is specifically mentioned in letter dated 24.4.2000 written by the Divisional Officer to the Branch Manager elaborately wherein he has admitted his mistake in para-6 of the letter which is as under: "This is to clarify that insured had never intended to exclude stock in process out of the scope of the coverage of the policy nor have they ever made any such written request for the same. Here I wish to submit that original and 1st copy of the cover notes were required to be given to the insured-one for them and another for their bankers. So IInd copy of the cover note was deposited with office for policy preparation. As I was left with illegible copy of the cover-note, so on occasions I used to redraft the wording of the cover note though insured always intended for full coverage for their stocks and sum insured was kept accordingly by them, it is merely due to drafting error that stocks in process got omitted under cover-note No. 94197 dated 22.4.1999 which is otherwise provided coverage under all previous insurances."

Further, the Divisional Manager by its letter dated 23.6.2000 recommended that insured should be paid Rs. 49,79,539/- which is the loss assessed by the Surveyor. In that report, it is specifically mentioned that the policies taken by the insured were renewals of the policies previously taken by him. The report also reflects that as the loss was major, loss claimed was investigated by Loss Prevention Association of India and their findings were also placed on the file.

5. SIMILARLY, the Regional Manager, on the basis of the recommendation of the

Divisional Manager and the report of the Regional Accountant, has also observed that stock-in-process was covered by the insurance policy and that was the intention of the insured. This aspect is again elaborated by the Branch Manager in his report. For us, it is not necessary to reiterate the same.

6. FROM the aforesaid documents on record, it is apparent that Insurance Company has unjustifiably deducted the amount on the ground that stock in process was not covered. In this view of the matter, there was no justifiable reason or basis for deducting damage to the stock in process or raw material for which the insurance coverage is given and not paying as per loss assessed by the Surveyor. Hence, the complaint is partly allowed and the Insurance Company is directed to pay the balance amount of Rs. 14,44,024/- (i.e. Rs. 49,80,000/- minus Rs. 35,35,976/- paid) with interest at the rate of 12% per annum. The interest will run from two months after the Surveyors report, i.e., 18.4.2000 till the date of payment. It is apparent that the decision not to pay the said amount smacks of arbitrariness, and, therefore, the Insurance Company is directed to pay costs of Rs. 50,000/- to the complainant. The complaint is disposed of in the above terms. Complaint disposed of.